

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

WADE LAY,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-17-1224-D
)	
OKLAHOMA DEPARTMENT OF)	
CORRECTIONS, et al.,)	
)	
Defendants.)	

REPORT AND RECOMMENDATION

Plaintiff, a state prisoner appearing pro se, filed a Complaint under 42 U.S.C. § 1983 [Doc. No. 1] and a handwritten motion for leave to proceed in forma pauperis, [Doc. No. 2]. United States District Judge Timothy D. DeGiusti referred the matter for initial proceedings in accordance with 28 U.S.C. §636(b)(1)(B) and (C). The Court ordered Plaintiff to cure deficiencies in his request to proceed in forma pauperis, [Doc. No. 7], and Plaintiff filed an Amended Complaint with a handwritten motion attached alleging that officials would not provide the relevant financial information, [Doc. No. 8]. The Court again ordered Plaintiff to cure the deficiencies, [Doc. No. 9], and Plaintiff thereafter filed an Application for Leave to Proceed in Forma Pauperis, [Doc. No. 10]. Finding Plaintiff had cured some, but not all, the original deficiencies and being unclear whether Plaintiff had received the Court's previous order, the Court gave Plaintiff a third and final opportunity to cure his errors. [Doc. No. 14]. Plaintiff finally complied, filing an Application for Leave to Proceed in Forma Pauperis on the proper form. [Doc. No. 15].

A review of Plaintiff's Application indicates that he had \$550.67 in his institutional savings account when he filed his Amended Complaint, [Doc. No. 15, at 4, 6], and thus has sufficient funds to prepay the \$400 filing fee. Because Plaintiff has sufficient funds available to prepay the entire filing fee, Plaintiff's Application for Leave to Proceed in Forma Pauperis [Doc. No. 15] should be

denied. *See* 28 U.S.C. § 1915(a)(1); *see also Lister v. Department of the Treasury*, 408 F.3d 1309, 1312 (10th Cir. 2005).

If Plaintiff does not pay the \$400 filing fee in full to the Clerk of the Court within twenty-one days of an order adopting this Report and Recommendation, it is recommended that this action be dismissed, without prejudice to refiling, pursuant to LCvR 3.3(e).

Plaintiff is advised of his right to object to this Report and Recommendation. *See* 28 U.S.C. § 636. Any objection must be filed with the Clerk of the District Court by January 24, 2018. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). Failure to make timely objection to this Report and Recommendation waives the right to appellate review of the factual and legal issues addressed herein. *See Moore v. United States*, 950 F.2d 656 (10th Cir. 1991).

ENTERED this 3rd day of January, 2018.



BERNARD M. JONES
UNITED STATES MAGISTRATE JUDGE